UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re	*	
	*	Chapter 7
JAN RICHARD SCHLICHTMANN,	*	Case No. 91-18387-RS
	*	
Debtor	*	

MEMORANDUM OF DECISION AND ORDER ON MOTION OF RESPONDENTS FOR LEAVE TO CONDUCT DISCOVERY

The Cadle Company, Atlanta Joint Venture LLP, and Mr. Daniel C. Cadle have moved for an additional ninety days in which to conduct discovery with respect to the Debtor's Motion for Sanctions for Violation of the Court's Discharge Order. By the order below, and for the reasons set forth below, the motion is denied.

Procedural History

On January 5, 2004, Debtor Jan Schlichtmann ("the Debtor") filed a motion against The Cadle Company, Atlanta Joint Venture LLP, and Mr. Daniel C. Cadle (collectively, "the Respondents") for sanctions for violation of the 1992 discharge order that entered in this case (the "Motion for Sanctions"). On February 2, 2004, the Respondents filed what they entitled a "Preliminary Response" to the motion. After a delay of several months, occasioned by the retirement of Judge Kenner (to whom the case was then assigned), the Debtor moved to have the case reassigned to another judge. On September 28, 2004, the Court, by Judge Feeney, denied reassignment as unnecessary but entered a Pretrial Order. The Pretrial Order required the Respondents to file a full answer to the Motion for Sanctions and required the parties (1) to confer and develop together a proposed discovery plan, (2) to file a written report outlining the proposed discovery plan no later than November 1, 2004, (3) to complete the discovery plan no

later than February 4, 2005, "unless the Court, upon appropriate motion and consideration of the discovery plan, alters the time and manner of discovery," and (4) to file a Joint Pretrial memorandum no later than March 4, 2005.

The Respondents did not file a full answer but instead filed a motion to dismiss the motion for sanctions ("Motion to Dismiss"). The Motion to Dismiss essentially reiterated the substance of their earlier Preliminary Response and sought dismissal of the Motion for Sanctions on the basis of res judicata, collateral estoppel, and the law of the case. In response, the Debtor filed a combined opposition to the Motion to Dismiss and request that judgment be entered in his favor.

The parties also timely filed a "Joint Report Regarding Proposed Discovery Plan." In it, each side stated that judgment should enter in its favor without need of discovery. The Respondents contended that judgment should enter on their motion to dismiss, the Debtor on his request for entry of judgment. The parties closed the report by setting forth their agreement "that the Court should conduct a hearing on the pending motions and requests, prior to either party incurring the significant expenses associated with discovery." Still, the parties filed no motion to stay the discovery period; nor did the Court *sua sponte* suspend the parties' obligation under the Pretrial Order to complete discovery by February 4, 2005.

On February 8, 2005, at a combined hearing on the Respondents' Motion to Dismiss and status conference on the Motion for Sanctions, the Court denied the Respondents' Motion to Dismiss, denied the Debtor's request for entry of judgment, and stated (on the basis of the pretrial order) that discovery with respect to the Motion for Sanctions was closed. Thereupon the Respondents requested additional time in which to conduct discovery. The Court told the Respondents that they should make their request in the form of a written motion.

The Respondents have now filed a written Motion for Leave to Conduct Discovery. In relevant part, the motion states:

> Cadle respectfully requests ninety (90) days to conduct discovery as was set forth in a Joint Report Regarding Discovery submitted by the Debtor and Cadle on November 1, 2004. Therein, both the Debtor and Cadle jointly indicated that while some discovery was necessary, neither party wanted to engage in the costs of discovery prior to the Court ruling on the threshold issue about whether the Sanctions Motion could withstand the Respondent's challenge. Now that the Court has ruled that there will be a trial, a certain amount of discovery is necessary.

The Debtor has filed an opposition to the motion, arguing that no extension of time is warranted where, as here, the need for additional time is based on a deliberate decision not to conduct discovery during the period in which the Court ordered that the parties should complete their discovery. The Pretrial Order specified that the discovery deadline could be altered only by order of the Court and only upon a motion for such relief, but, the Debtor points out, the Respondents filed no such motion, and the Court has not altered the time.

Discussion

The Court finds no cause here to extend the discovery period. Judge Feeney's pretrial order was clear as to the date by which the parties were to complete discovery. The order was also clear about the manner in which the time could be altered: it would require an order of the Court, entered upon an appropriate motion. The Respondents filed no such motion and obtained no order. They deliberately disregarded the deadline in the pretrial order, and they did so at their peril.

The pendency during the discovery period of their Motion to Dismiss, and the possibility that that motion might be allowed and thus obviate the need for discovery, does not excuse this

disregard. Judge Feeney had entered the Pretrial Order *after* the Respondents had already filed their Preliminary Response, which Preliminary Response was in substance virtually identical to their Motion to Dismiss. Moreover, the same Pretrial Order obligated the Respondents to file "a full answer." The Pretrial Order was thus plainly intended to ready the parties to fully litigate the Motion for Sanctions upon completion of the deadlines for completion of discovery and for filing of the pretrial memorandum. In choosing not to file a full answer, but only a Motion to Dismiss (essentially a reiteration of what they had already filed), and in choosing not to conduct discovery during the designated time, the Respondents were substituting their own plan for that of the Court. This they were not free to do. Certainly it is not cause to extend the discovery deadline.

ORDER

For the reasons set forth above, the Motion of Respondents for Leave to Conduct Discovery is hereby DENIED.

Date: March 1, 2005

Robert Somma
Robert Somma
United States Bankruptcy Judge

cc: Jan Richard Schlichtmann, Esq., Debtor
Mark Bluver, Esq., for The Cadle Company, Atlanta Joint Venture LLP, and Mr. Daniel C. Cadle